



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Doc. No. AMS-FV-12-0051; FV12-966-1 FIR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Florida Tomato Committee (Committee) for the 2012-13 and subsequent fiscal periods from \$0.037 to \$0.024 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. The interim rule was necessary to allow the Committee to reduce its financial reserve and to help reduce overall industry costs, while still providing adequate funding to meet program expenses.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, Florida tomato handlers are subject to assessments, which provide funds to administer the

order. Assessment rates issued under the order are intended to be applicable to all assessable Florida tomatoes for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period began on August 1, and ends on July 31.

In an interim rule published in the **Federal Register** on February 8, 2013, and effective on February 11, 2013, (78 FR 9307, Doc. No. AMS-FV-12-0051, FV12-966-1 IR), § 966.234 was amended by decreasing the assessment rate established for Florida tomatoes for the 2012-13 and subsequent fiscal periods from \$0.037 to \$0.024 per 25-pound carton. The decrease in the per 25-pound carton assessment rate allows the Committee to reduce its financial reserve and helps to reduce overall industry cost, while still providing adequate funding to meet program expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 80 handlers of tomatoes in the production area and approximately 100 producers subject to regulation under the marketing order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000 and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2011-12 season was approximately \$6.62 per 25-pound container, and total fresh shipments for the 2011-12 season were approximately 38,175,363 25-pound cartons of tomatoes. Committee data indicates that approximately 21 percent of the handlers handle 90 percent of the total volume shipped. Based on the average price, about 80 percent of handlers

could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012-13 and subsequent fiscal periods from \$0.037 to \$0.024 per 25-pound carton of tomatoes. The Committee unanimously recommended 2012-13 expenditures of \$1,672,952 and an assessment rate of \$0.024 per 25-pound carton of tomatoes. The assessment rate of \$0.024 is \$0.013 lower than the rate previously in effect. Applying the \$0.024 rate per 25-pound carton assessment rate to the Committee's 35 million cartons crop estimate should provide \$840,000, in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, interest income, and funds from block grants, will be adequate to cover budgeted expenses. This action will allow the Committee to reduce its financial reserve and will help lower overall industry

cost, while still providing adequate funding to meet program expenses.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 22, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before April 9, 2013. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule , go to:
<http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0051-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR

9307, February 8, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 966 - TOMATOES GROWN IN FLORIDA

Accordingly, the interim rule amending 7 CFR part 966, which was published at 78 FR 9307 on February 8, 2013, is adopted as a final rule, without change.

Dated: May 8, 2013

David R. Shipman
Administrator
Agricultural Marketing Service

Billing Code: 3410-02P

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